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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/525,892	03/15/2000	Alfonso Navarro	660005.98641	9509

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EXAMINER

SHERRER, CURTIS EDWARD

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## 1761

Part of Paper No. 9

## DETAILED ACTION

### *Election/Restrictions*

Claims 8-10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in Paper No. 8.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 4 are indefinite because the scope of the phrase “condition suitable to allow oxygen uptake by the yeast required for sterol and unsaturated fatty acid synthesis” is unknown.

Claims 2 and 5 are indefinite because the scope of the phrase “concentration effective to promote yeast performance” is unknown.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Seebeck et al (U.S. Pat. No. 4,329,433)(hereinafter Seebeck).

Seebeck teaches a fermentation process whereby yeast is first cultured under aerobic conditions with an "enriched nutrient solution especially prepared for the culture of yeast. (Col. 2, lines 35-60). See also col. 3, lines 47-50. a "juice concentrate" is used as the nutrient solution. (Col. 3, lines 15-18). The yeast fermentation is followed by continuous fermentation under anaerobic conditions (col. 2, lines 19-25). "The fermentable solution can be any desired solution that is fermentable with yeast, . . . , although beer wort can also be fermented by the method of the invention." (Col. 5, lines 10-20).

It is considered inherent that the prior art process provides for enough aeration to allow oxygen uptake by the yeast required for sterol and unsaturated fatty acid synthesis because the claimed process is the same at that disclosed by Seebeck.

The figure shows that the yeast is removed and then returned to the fermentation tower.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sebeck in view of applicants' admissions.

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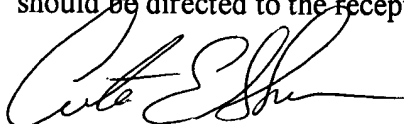
Seebeck teaches that cited above but does not specifically disclose that the added nutrient contains zinc. While grape juice inherently contains zinc, applicants admit that the prior art has added zinc to yeast fermentations to enhance the fermentation rate. (Top of page 3 of the specification). It would have been obvious to those of ordinary skill in the art to add zinc as part of the yeast nutrients used by Seebeck because it is beneficial to the yeast fermentation rate as disclosed by applicants.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer whose telephone number is 703-308-3847. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3602 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Curtis E. Sherrer  
Primary Examiner  
March 15, 2002